WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1130

IN THE MATTER OF:		Served April 2, 1971
Application of WMA Transit Company for Authority to Increase Fares.	)))	Application No. 655 Docket No. 222

On March 24, 1971, we issued Order No. 1127 authorizing the WMA Transit Company (WMA) to increase its regular route bus fares, including an increase in its intra-District of Columbia fare from 35¢ to 45¢. On March 30, 1971, Southeast Neighbors, Inc. (hereinafter referred to as Neighbors) filed an application for reconsideration, which we denied the same day in Order No. 1128. As we had not had an opportunity at that time to commit our reasons to writing, we promised to set out in detail our reasons for that denial in an opinion to be issued by April 2, 1971.

The application for reconsideration of Neighbors contains two main contentions of error on the part of the Commission, each of which we will discuss in turn.

1. The claim is made that the 45¢ fare is an unjust, unreasonable, and discriminatory fare classification as between District of Columbia riders of D. C. Transit and District of Columbia riders of WMA, inasmuch as the intra-District of Columbia fare on D. C. Transit is 40¢. Neighbors argues that there was no rationale provided for the establishment of a 45¢ fare, that there was no evidence that WMA riders were financially better able to pay, or that they receive better service than D. C. Transit riders.

The discrimination argument made by Neighbors misconstrues the Compact. Article XII, Section 6(a)(2) provides that if the Commission finds any fare to be "unduly discriminatory either between riders or sections of the Metropolitan District" it shall prescribe a lawful fare. This does not impose a requirement that identical fares be charged by different companies, even for identical services. Indeed the intra-District of Columbia fare for WMA historically has not been the same as the D. C. Transit fare. Since April 14, 1963, the fares have been the same only for a single period of six months. At times the WMA fare has been higher and at times lower than the D. C. Transit fare. (See table attached.)

Moreover, charter and other rates for identical services often vary from carrier to carrier.

We read the non-discrimination provision of the Compact as requiring that the fare structure of a given company must not contain undue discrimination as between its patrons. Once we have determined that a fare increase is required, and have determined the amount of increased revenue which must be produced, we must assure that the burden of providing the higher revenues is borne equitably over the ridership of the company's entire system. In Order No. 1127 we found a need for an increased fare and distributed the increase over the various categories of riders in approximately the same proportion they had borne the total revenues under the prior rate structure. Were we required by the Compact, as Neighbors now argues, to keep the fare for the intra-District of Columbia riders at the level of the D. C. Transit fare, we would be precluded from establishing a fare structure for a given company which would be fair to all its riders, including those whose fares were not artificially affected by fares on a competing carrier. That, in our view, would have resulted in the undue discrimination condemned by the Compact.

Neighbors argues that the fact that the share of total revenues to be borne by intra-D. C. riders has increased from 15.3 percent under the prior rate structure to 15.8 percent under the new "points up the obvious discrimination" of the 45¢ D. C. fare. On the contrary, if the D. C. fare had been set at 40¢, the fare for travel to the first zone in Maryland would of necessity have been higher in order to produce the revenues required. We do not consider that a further disparity between the D. C. fare and the first zone Maryland fare would be justified.

As to the contention that there is no evidence that WMA riders are financially better able to pay, we do not feel that the Compact permits us to establish fares based on individual patrons' ability to pay, and, therefore, ability or inability to pay has not been an issue in this case. As to the contention that the evidence does not indicate that WMA riders from Southeast Washington receive better service than D. C. Transit riders, there is in fact testimony and evidence that WMA service is generally an express-type service to downtown Washington which averages a 19 percent faster running time than the D. C. Transit service. While we do not consider that fact a major determinant in establishing the 45¢ fare for WMA, it indicates that the services of the two companies, for which Neighbors seeks identical fares, are somewhat different in nature.

The Neighbors application for reconsideration quotes language from Order No. 1127 to the effect that the Commission is not disposed to impose substantially higher fares on some residents of the District of

Columbia merely because they reside in the area of the District served only by WMA. Neighbors also quotes from staff testimony to the effect that passengers in Southeast Washington should pay the same fare as other passengers in other sections of the city. The inference we draw is that we have said one thing and done another. But our statement, and that of the staff, are used out of context. In both instances, the statements quoted were made in discussions of the question of whether the free transfer between WMA and D. C. Transit should be eliminated as requested by the company. If the free transfer arrangement had been eliminated the result would have been a doubling of the fare for those who use the transfer, a truly substantially higher fare. This was the situation to which we were addressing ourselves and our statement has no applicability to a 5¢ differential.

We should like to correct another misconception stated in Neighbors application. They assert that the purpose of Order No. 2402 of the Public Utilities Commission of the District of Columbia, issued in 1941, and which initially authorized the free transfer arrangement, was to establish a comparable fare between riders of D. C. Transit and WMA. The purpose of that order, and the purpose of our refusal to rescind the free transfer arrangement established by that order, was not to assure comparable or identical fares between the two companies but was simply to prevent a resident of Southeast Washington not served by D. C. Transit from having to pay <u>two</u> fares for bus travel within the District of Columbia. As we have pointed out, the two companies have been authorized to charge different fares over the years while Order No. 2402 was in effect. There is nothing inconsistent with the provisions of Order No. 2402 allowing a free transfer and the concept of different fares charged by different companies.

2. The second contention of error lies in the charge that the establishment of the 45¢ fare is an arbitrary, capricious and unreasonable exercise of authority, as the Commission failed to take into consideration the recommendations of the staff on (a) the effect of rates on the movement of traffic by WMA, (b) the need for adequate and efficient bus service at the lowest cost consistent with the furnishing of such service, and (c) honest and efficient management.

On the issue of the effect of the 45¢ rate on the movement of traffic, Neighbors asserts that the Commission did not address itself to the passenger resistance that would result from a 45¢ intra-D. C. fare, and they charge that the Commission ignored the loss of revenue to WMA from D. C. riders under the 45¢ fare. In forecasting the number of riders for the future annual period under its proposed 50¢ fare, WMA used a resistance factor of .25 percent for every 1 percent increase in fare. The staff considered the .25 percent resistance factor to be unrealistic. Calculating from the experience under WMA's last fare increase in June 1970, the staff

concluded that the resistance factor would be .32 percent for every 1 percent increase in fare. With respect to those passengers who had been using the free transfer, the staff took the position that the resistance would be even higher and estimated it would reach .50 percent if the free transfer were eliminated. And with respect to those riders in Southeast Washington who have D. C. Transit service in addition to WMA service available to them, the staff felt that the fact of the existence of a competing service at the lower fare called for the use of a resistance factor of .75 percent for every 1 percent increase in fare. The Commission, in turn, convinced by the rationale the staff presented in support of its higher resistance factors, adopted them (See Order No. 1127, page 5). The staff's resistance factors were used in calculating the number of passengers among each category of riders forecast by the Commission for the future annual period. It simply cannot be said that the impact of the 45¢ fare on WMA's revenue and on traffic movement, as opposed to the results under a 40¢ fare, were unknown or ignored by the Commission. On the contrary, that impact was very specifically calculated and taken into account.

On the issue of the need of adequate and efficient transportation service, Neighbors asserts that the Commission gave no weight to the "persuasive arguments" in the statements submitted by Mayor Washington, a statement by City Councilman Stanley Anderson and a resolution of the City Council opposing the fare increase. We should like to take this opportunity to say again, as we have so many times and places in the past three years, that we find the problem of increasing transit fares a most perplexing one, and one which cries out for a solution. We are painfully aware of the undesirable results flowing from increasing fares. The corrosive effect that higher fares have on the public transportation facilities themselves, the contribution that increased bus fares make to increased automobile traffic and congestion, and most importantly the economic impact on persons at the low end of the economic scale, are all too well known to us. Nevertheless, we have a responsibility to assure that transportation facilities are provided in the Metropolitan area at the most reasonable fares attainable. That goal cannot be accomplished by freezing fares at yesterday's levels when we know those fares will not cover the increased costs characteristic of the inflationary period we are experiencing. Moreover, the very vexing problems that the Mayor and other public officials have addressed are, for the most part, beyond our power as a regulatory agency to solve. We have urged the Congress to enact subsidy legislation to remove from the bus rider some of the burden of the increasing costs for mass transit and place it where we believe it belongs, on the community as a whole. We have sought the cooperation of the Mayor in developing an interim program to provide a selective subsidy to those persons forced to live on very limited incomes. If these problems are ever to be solved, it will require a constructive effort from the Mayor, and the City Council, not mere resolutions. In the meantime, we will be compelled to continue

to place the burden of maintaining the mass transit system solely on the rider, for he is the only present legal source of funds.

In further response to the contention that we have ignored the pleas of the Mayor and City Councilmen, we would emphatically note that we did in fact deny a major portion of the increase requested by the company for intra-D. C. riders. The company requested a 50¢ fare and the elimination of the free transfer. We authorized much less. Deliberately overlooking what we denied, and noting only that we authorized some of the increase, does not provide support for the contention that we ignored those who opposed the fare increase.

A further Neighbors argument on the issue of adequate and efficient service is that the Commission failed to "justify its departure from its staff's criticism of WMA's level of service to the public." The staff had demonstrated in the record that WMA has followed the practice of giving preference to the performance of charter service in derogation of regular route service in instances when there have not been enough buses or drivers available to perform both, that the air-conditioning units on most of WMA's buses were inoperative during the summer months last year, and that WMA has a higher accident rate than other mass transit operators in the area which results in what the staff considered to be excessive insurance costs. The Neighbors application for reconsideration contends that the Commission should have denied the fare increase until the company "evidences a capacity" to offer improved service. We have not ignored the record with regard to service deficiencies nor have we "departed" from the staff's position.

With respect to the matter of preferring charter to regular route service in the assignment of vehicles and drivers, we have ordered the company to correct that situation and have ordered the staff to secure a daily report of the interruptions to regular route service caused by charter business for the period April 1, 1971, through August 31, 1971. We have further directed that the staff submit to us by October 1, 1971, a full report on the subject. Obviously, this action will, if this company is at all well advised, cause the problem to be corrected. If it does not, we, of course, will take more drastic action to assure that it does not recur. On the matter of inoperative air-conditioners, we have allowed additional amounts specifically for the hiring of new mechanic personnel and for needed air-conditioning parts. To assure that those additional resources are employed to correct the condition of the air-conditioners, we have ordered a detailed report to be submitted each month, within five days of the end of the month, which will tell us which vehicle has an inoperative air-conditioner, why it is inoperative, and a commitment as to when it will be made operative. Again, we believe that the company will respond

by putting those air-conditioners in operation as quickly as it can. If after a month or two the level of air-conditioners not operating remains high, we will adopt a stricter approach to the problem. As to the high accident rate, we have again taken positive measures to assure improvement. We have ordered the company to employ a safety consultant, whose qualifications must be satisfactory to the staff, to do a comprehensive study of what is needed in this company to achieve a top-level safety record.

We consider that the steps we have taken to deal with the management and service deficiencies that have been pointed out to us by the staff and others are a proper response and will effectively deal with those deficiencies. Had we, on the basis of those deficiencies, chosen to deny a fare increase, a course which we could easily have followed and which would have perhaps won the temporary plaudits of the public, the problems would only have deepened. The inevitable result would have been worsening service to the public and the ultimate collapse of the company and the service it provides.

On the issue of honesty and efficiency, Neighbors points to our conclusion that the company cannot be made completely financially whole through a fare increase but must take other steps to achieve full financial stability. Neighbors declares that the Commission is allowing a rate which will provide a 5.99 percent rate of return on gross operating revenues in the face of enumerated deficiencies in the company's management. The Commission has, concludes Neighbors, allowed the "ratepayer to absorb the cost of inefficient and uneconomical management."

In Order No. 1127 we pointed out that in order to overcome its cash flow problems, the company would have to find some source of funds in addition to the fares we established in that order. It was our conclusion that the rates established represented the full contribution that could be expected from the ratepayer. Our analysis in Order No. 1127 led us to the conclusion that a fare increase was in order. However, we felt constrained to point out that even with the fare increase the company would likely have to seek other financial assistance, and that we could not and would not establish a fare structure designed completely to cure the financial difficulties of the company stemming from situations in the past. The argument that our discussion of cash flow problems should lead to the conclusion that no fare increase was justified misses the point entirely. We would also point out that the 5.99 percent profit figure cited by Neighbors was taken from the wrong table in the order. The net operating income we projected under the new fares was 5.01 percent of gross operating revenues. This amounted to $202,496. Interest expense absorbs $178,733 of that total, leaving $23,763 or .59 percent as "profit". This can hardly be considered an exorbitant reward to management.

The "management deficiencies" enumerated which, it is argued, constitute the basis for a denial of fare increase, are (1) an accounting entry of $47,000 for repairs on six buses which were never repaired; (2) an accounting entry of $40,000 relating to an insurance deposit; (3) the high accident rate of WMA and resulting excessive insurance costs; (4) certain salary increases for WMA's non-union employees, which the staff witness did not allow in his calculation of costs; (5) WMA's forecast of charter revenues at last year's level; (6) the fact that a substantial number of buses of WMA's fleet have been out of service for an excessive period of time; (7) the practice of giving preference to charter business in the assignment of buses and drivers; (8) the criticism leveled at WMA's maintenance practices.

We do not agree that all of the items enumerated are "management deficiencies". The accounting entries represented honest differences of opinion between the staff auditors and the company accountants. In any case, those entries had no impact on the expenses allowed in the future annual period. Hence, they played no part in the construction of the fares established in Order No. 1127. Likewise, we do not consider the company's forecast of charter revenues for the future annual period, which we considered to be low, to be a "management deficiency". There was a considerable amount of evidence submitted on both sides of this issue by the company and the staff and a considerable amount of cross-examination on the point. We found it extremely difficult, as we always do, to try to forecast what level of charter revenue can be expected in a given period in the future. We believe that the record indicates that the company's estimate, that its charter revenues in the future annual period would not exceed those of the historical period, has some merit. But on balance the staff's forecast that charter revenues would increase seemed to us more likely. The fact that we chose to adopt the staff's view does not lead to the conclusion that the company's lower forecast constituted a "management deficiency".

On the issue of salary increases, we do not consider the company's request for an allowance to cover those increases to be a "management deficiency". At the time of his direct testimony the staff witness concluded that the level of some of the increases was high compared to increases in prior years and concluded that, in any event, since the company was not committed to the employees to give the increases, the projected increases were purely a speculative expense. We did not agree that the increases were excessive because, while the percentages of increase were high in some cases, the record showed that increases in the past had been low, and the pay scale projected was not excessive when compared with the responsibilities of the personnel involved. Further, the objection that the staff witness made regarding the speculative nature of the increases was overcome by sworn testimony of the president of WMA who said that the increases would be given in full as soon as some rate increase was allowed.

We would agree that the other deficiencies enumerated are properly labeled as "management deficiencies". As to the accident rate and the attendant insurance costs, and as to the preference for charter business in derogation of regular route service, we have already described the steps that will be taken to effectively eliminate those deficiencies. On the question of buses being out of service for excessive periods of time, we found that there were eleven buses as of the conclusion of the hearing that we felt the evidence indicated would not be returned to service during the future annual period. Therefore, we disallowed, as a cost element in determining the new fare, the depreciation for the future annual period on those eleven buses. On the question of maintenance, we have allowed the company the expenses that we consider it will incur in the conduct of a realistic program required to provide current maintenance and repair to its fleet. We have not allowed, as the application for reconsideration points out, any expense for deferred maintenance. Thus, with respect to every category of "management deficiency" we have either disallowed an expense which has been created by that deficiency or we have taken effective steps to correct it. Furthermore, we allowed a return of only $23,763 after interest expense, less than the return we allowed in the last WMA rate case (see Order No. 1049 issued June 17, 1970) when we deliberately set the return at a low level because of the service deficiencies we found to exist. In all the circumstances of this case, including the possibility of "management deficiency", we consider the return allowed to be fair.

At the conclusion of its application for reconsideration, Neighbors requested that the record be reopened to permit additional hearings to determine (a) whether the 45¢ fare is discriminatory, (b) whether the 45¢ fare will have an adverse effect on traffic movement as to D. C. riders, (c) whether WMA is providing adequate and efficient transportation service in the far Southeast section of Washington, (d) whether WMA is operating under honest, economical and efficient management. We have described our views as to the discrimination point and have pointed out that we have taken detailed account of the effect of the 45¢ fare on D. C. ridership. There is no need for further evidence on either of those points. As to honest, economic, and efficient management of WMA, we are requiring continuing and detailed surveillance and reports from the company, from the staff and from an outside safety consultant. The reports that are submitted to us and the actions we take as a result will be matters of public record. Finally, petitioners raise the question whether WMA is providing adequate and efficient transportation service in the far Southeast section of the District. If petitioners feel that there are issues regarding service offered by WMA other than those already raised and examined in this record, they can bring them to our attention by filing a complaint to initiate a proceeding

in which such problems could be fully examined. A petition for reconsideration in a rate case in which the record has already been completed is not the appropriate vehicle for such action, however.

BY DIRECTION OF THE COMMISSION:

GEORGE A. AVERY
Chairman

HOOKER, Commissioner, not participating.

COMPARISON OF INTRA-DISTRICT OF COLUMBIA FARES OF D.C. TRANSIT SYSTEM, INC. AND WMA TRANSIT COMPANY SINCE THE COMPACT CAME INTO EFFECT

D.C. Transit		WMA			
Cash	Token	Cash	Token	Order No.	Effective Date
25	20	25	20		Compact effective (3/22/61)
25	21 1/4	--	--	245	4/14/63
--	--	25		312	9/22/63
25	23 3/4	--		656	1/14/67
25	21 1/4	--		Court Order	1/28/67
25	24 1/2	--		684	3/15/67
27	25	--		773	1/28/68
30	26 1/4	--		882	10/31/68
30	30	--		900	12/24/68
--	--	30		939	4/13/69
32	32	--		984	10/26/69
--	--	35		1049	6/20/70
40	40	--		1052/1057	7/11/70
--	--	45		1127	3/31/71

discontinued